



Commonwealth of Kentucky

MASTER AGREEMENT

IMPORTANT

Show Doc ID number on all packages, invoices and correspondence.

Doc Description: eScrap		
Doc ID No: MA 758 0800003547 1	Proc Folder: 966022	
Procurement Type: Computer Services		
Effective Date: 2008-10-01	Expiration Date: 2010-09-30	Not To Exceed Amount
Administered By: Amy Carol Richardson		Cited Authority: FAP111-57-00-CS
Telephone: 502-564-4510		Issued By: Amy Carol Richardson
VENDOR CREATIVE RECYCLING SYSTEMS CREATIVE RECYCLING SYSTEMS OF KENTUCKY, LLC 8108 KRAUSS BLVD SUITE 110 TAMPA FL 33619 US		

Line	CL Description	Delivery Days	Quantity	Unit Issue	Unit Price	Contract Amt	Total Price
1	Reimbursement Line ù Commonwealth Receives Reimbursement	1	0.00	EA	0.00000	0.00	0.00

Extended Description

Laptop Computers: \$15.00 per item or \$2.00 per pound
 CPUÆs & Accessories: \$7.00 per item or \$0.25 per pound
 Cables: \$0.10 per pound

Line	CL Description	Delivery Days	Quantity	Unit Issue	Unit Price	Contract Amt	Total Price
2	Console & Table Top Televisions per item	1	0.00	EA	7.50000	0.00	0.00

Extended Description

Console & Table Top Televisions per item

Line	CL Description	Delivery Days	Quantity	Unit Issue	Unit Price	Contract Amt	Total Price
3	Console & Table Top Televisions per pound	1	0.00	LB	0.15000	0.00	0.00

Extended Description

Console & Table Top Televisions per pound

Line	CL Description	Delivery Days	Quantity	Unit Issue	Unit Price	Contract Amt	Total Price
4	Miscellaneous Components & Small Electronics per item	1	0.00	EA	3.00000	0.00	0.00

Extended Description

Miscellaneous Components & Small Electronics per item

Line	CL Description	Delivery Days	Quantity	Unit Issue	Unit Price	Contract Amt	Total Price
5	Miscellaneous Components & Small Electronics per pound	1	0.00	LB	0.15000	0.00	0.00

Extended Description

Extended Description

Miscellaneous Components & Small Electronics per pound

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**CONTRACT
FOR
STATE-WIDE ESCRAP SERVICES
END-OF LIFE ELECTRONIC EQUIPMENT/COMPONENTS
BETWEEN
THE COMMONWEALTH OF KENTUCKY
AND
CREATIVE RECYCLING SYSTEMS, INC.**

This Master Agreement (“Contract”) is entered into, by and between the Commonwealth of Kentucky (“the Commonwealth”), and Creative Recycling Systems, Inc., (“CRS”) as the Prime Contractor to establish a Contract for State-Wide eScrap Services for end-of life electronic equipment/components.

The Commonwealth and Contractor agree to the following:

I. Scope of Master Agreement

This Master Agreement shall provide the Commonwealth a contract and a reimbursement schedule for the pickup and recycling services for end-of-life electronic equipment and components.

II. Contract Components and Order of Precedence

The Commonwealth’s acceptance of the Contractor’s offer in response to the Solicitation, indicated by the issuance of a Contract Award by the Office of Procurement Services, shall create a valid Contract between the Parties consisting of the following:

1. Any written Agreement between the Parties;
2. Any Addenda to the Solicitation, RFP 758 0800001260;
3. The Solicitation and all attachments thereto, including Section 40--Terms and Conditions of a Contract with the Commonwealth of Kentucky;
4. General Conditions contained in 200 KAR 5:021 and Office of Procurement Services’ FAP110-10-00;
5. Any Best and Final Offer;
6. Any clarifications concerning the Contractor’s proposal in response to the Solicitation;
7. The Contractor’s proposal in response to the Solicitation, RFP 758 0800001260.

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In the event of any conflict between or among the provisions contained in the Contract, the order of precedence shall be as enumerated above.

III. Negotiated Items

eScrap Aggregator Sorting, Packaging, and Expediting Plan

CRS shall provide trailers, pallets, gaylord boxes, milk-runs, and combinations of all to the Commonwealth. CRS shall meet the needs of the specific facilities through various means, and assist with determining the types of receptacles, trailers, or containers needed for individual facilities. CRS has a five (5) day turn around period for the pick up and removal of these items.

CRS shall provide adequate numbers of shipping containers (Gaylord type boxes), rolls of stretch wrap, a platform scale at the Surplus Properties location (if requested) and other packaging materials to meet the Commonwealths and CRS requirements.

Additional Recycling Capabilities and Resources

CRS expanded additional capacity and resource to include office machines such as typewriters, calculators, Dictaphones, projectors, and telephones.

Charges and Payments

Contractor reimbursement to Customer will take up to forty-five (45) days.

Price

- Televisions: CRS agrees to charge \$7.50 each for the recycling processes.
- Copy Machines: CRS agrees to recycle all Copy Machines at no charge.
- UPS Units: CRS agrees to recycle all UPS Units at no charge. The removal of UPS Units would allow for lighter weight in the Miscellaneous Components category.
- CPU's & accessories: The payment price would reflect only items that include the Computer, accessories will not be paid at \$7.00 individually. The accessories are defined as the keyboard, mouse and power cord. The computer is the important component. A deduction will not incur because of missing accessories.

Vendor Technical Contact

Richard Golden
8108 Krauss Blvd.
Suite 110
Tampa, FL 33619
Email: rgolden@crserecycling.com
Cell: 813-842-3209

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IV. Terms and Conditions

Section 40.000—Final Agreement

This Contract represents the entire agreement between the parties with respect to the subject matter hereof. Prior negotiations, representations, or agreements, either written or oral, between the parties hereto relating to the subject matter hereof shall be of no effect upon this Contract.

Section 40.010—Agencies to Be Served

This contract shall be for use by the following agencies of the Commonwealth of Kentucky:

All State Agencies

No shipments shall be made except upon receipt by Vendor of an official Delivery Order from a using agency.

Section 40.020—Political Subdivisions

Under Kentucky Statutes, political subdivisions of the State including cities, counties, and school districts may participate in All State Agency Master Agreements to the same extent as agencies of the Commonwealth.

Section 40.030—Contract Provisions

If any provision of this Contract (including items incorporated by reference) is declared or found to be illegal, unenforceable, or void, then both the Commonwealth and the Contractor shall be relieved of all obligations arising under such provision. If the remainder of this Contract is capable of performance, it shall not be affected by such declaration or finding and shall be fully performed.

Section 40.040—Type of Contract

This contract shall be on the basis of a **firm fixed unit price**

Section 40.050—Term of Contract and Renewal Options

The initial term of this Contract shall be for a period of **two (2) years** from the effective date of the Award of Contract.

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This Contract may be renewed at the completion of the initial Contract period for four **(4) additional two (2) year periods**, upon the mutual agreement of the Parties. Such mutual agreement shall take the form of an addendum to the Contract under Section 40.050—Changes and Modifications to the Contract.

The Commonwealth reserves the right not to exercise any or all renewal options. The Commonwealth reserves the right to extend the contract for a period less than the length of the above-referenced renewal period if such an extension is determined by the Commonwealth Buyer to be in the best interest of the Commonwealth.

Section 40.060—Multiyear Contracts

If this Contract is for a term that extends beyond the end of the biennium in which the Contract was made, payment and performance obligations for succeeding fiscal years are subject to the availability of funds. Therefore, when funds are not appropriated or otherwise made available to support continuation of performance of the Contract beyond the biennium, the Contract for such subsequent year(s) may be canceled and the Contractor shall be reimbursed in accordance with Section 40.260—Provisions for Termination of the Contract.

Section 40.070—Changes and Modifications to the Contract

Pursuant to KRS 45A.210(1) and 200 KAR 5:311, no modification or change of any provision in the Contract shall be made, or construed to have been made, unless such modification is mutually agreed to in writing by the Contractor and the Commonwealth, and incorporated as a written amendment to the Contract and processed through the Office of Procurement Services and approved by the Finance and Administration Cabinet prior to the effective date of such modification or change pursuant to KRS 45A.210(1) and 200 KAR 5:311. Memorandum of understanding, written clarification, and/or correspondence shall not be construed as amendments to the Contract.

If the Contractor finds at any time that existing conditions made modification of the Contract necessary, it shall promptly report such matters to the Commonwealth Buyer for consideration and decision.

Section 40.080—Changes in Scope

The Commonwealth may, at any time by written order, make changes within the general scope of the Contract. No changes in scope are to be conducted except at the approval of the Commonwealth through the process described in Section 40.070—Changes and

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Modifications to the Contract.

Section 40.090—Contract Conformance

If the Commonwealth Buyer determines that deliverables due under this Contract are not in conformance with the terms and conditions of the Contract and the mutually agreed-upon project plan, the Buyer may request the Contractor to deliver assurances in the form of additional Contractor resources and to demonstrate that other major schedules will not be affected. The Commonwealth shall determine the quantity and quality of such additional resources and failure to comply may constitute default by the Contractor.

Section 40.100—Assignment

The Contractor shall not assign the Contract in whole or in part or any payment arising there from without the prior written consent of the Commonwealth Buyer. Any purported assignment is void.

Section 40.110—Notices

All programmatic communications with regard to day-to-day performance under this contract are to be made to the Agency technical contact(s) identified below:

Tom Heil
EPPC
DEP, DWM
14 Reilly Road
Frankfort, KY 40601
(502) 564-6716
Email: Thomas.heil@ky.gov

All communications of a contractual or legal nature are to be made to the Commonwealth Buyer.

Amy Monroe Richardson, CPPB
COMMONWEALTH OF KENTUCKY
FINANCE AND ADMINISTRATION CABINET
Office of Procurement Services

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New Capitol Annex
702 CAPITOL AVE, RM 096
FRANKFORT KY 40601
(502) 564-6524
Fax: (502) 696-5194
Amy.Richardson@ky.gov

Section 40.120—Payment

The Commonwealth will make payment within thirty (30) working days of receipt of Contractor's invoice or of acceptance of goods and/or services in accordance with KRS 45.453 and KRS 45.454.

Payments are predicated upon successful completion and acceptance of the described work, services, supplies, or commodities, and delivery of the required documentation. Invoices for payment shall be submitted to the Agency Contact Person or his representative.

Section 40.130—Contractor Cooperation in Related Efforts

The Commonwealth of Kentucky may undertake or award other contracts for additional or related work, services, supplies, or commodities, and the Contractor shall fully cooperate with such other contractors and Commonwealth employees. The Contractor shall not commit or permit any act that will interfere with the performance of work by any other contractor or by Commonwealth employees.

Section 40.140—Subcontractors

The Contractor is permitted to make subcontract(s) with any other party for furnishing any of the work or services herein. The Contractor shall be **solely responsible** for performance of the entire Contract whether or not subcontractors are used. The Commonwealth shall not be involved in the relationship between the prime contractor and the subcontractor. Any issues that arise as a result of this relationship shall be resolved by the prime contractor.

All references to the Contractor shall be construed to encompass both the Contractor and any subcontractors of the Contractor.

Section 40.150—Contractor Affiliation

"Affiliate" shall mean a branch, division or subsidiary that is effectively controlled by

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another party. If any affiliate of the Contractor shall take any action that, if done by the Contractor, would constitute a breach of this agreement, the same shall be deemed a breach by such party with like legal effect.

Section 40.160—Commonwealth Property

The Contractor shall be responsible for the proper custody and care of any Commonwealth-owned property furnished for Contractor's use in connections with the performance of this Contract. The Contractor shall reimburse the Commonwealth for its loss or damage, normal wear and tear excepted.

Section 40.170—Insurance

The Contractor shall provide professional liability insurance for its professional employees, public liability, property damage, and workers' compensation insurance, insuring as they may appear, the interest of all parties of agreement against any and all claims which may arise out of the Contractor's operations under the terms of this Contract. In the event any carrier of such insurance exercises cancellation, notice of such cancellation shall be made immediately to the Commonwealth Buyer.

Section 40.180—Confidentiality of Contract Terms

The Contractor and the Commonwealth agree that all information communicated between them before the effective date of this Contract shall be received in strict confidence and shall not be necessarily disclosed by the receiving party, its agents, or employees without prior written consent of the other party. Such material will be kept confidential subject to Commonwealth and Federal public information disclosure laws.

Upon signing of this Contract by all Parties, terms of the Contract become available to the public, pursuant to the provisions of the Kentucky Revised Statutes.

The Contractor shall have an appropriate agreement with its Subcontractors extending these confidentiality requirements to all Subcontractors' employees.

Section 40.190—Confidential Information

The Contractor shall comply with the provisions of the Privacy Act of 1974 and instruct its employees to use the same degree of care as it uses with its own data to keep confidential information concerning client data, the business of the Commonwealth, its

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financial affairs, its relations with its citizens and its employees, as well as any other information which may be specifically classified as confidential by the Commonwealth in writing to the Contractor. All Federal and State Regulations and Statutes related to confidentiality shall be applicable to the Contractor. The Contractor shall have an appropriate agreement with its employees to that effect, provided however, that the foregoing will not apply to:

- Information which the Commonwealth has released in writing from being maintained in confidence;
- Information which at the time of disclosure is in the public domain by having been printed and published and available to the public in libraries or other public places where such data is usually collected; or
- Information, which, after disclosure, becomes part of the public domain as defined above, through no act of the Contractor.

The Contractor shall have an appropriate agreement with its Subcontractors extending these confidentiality requirements to all Subcontractors' employees.

Section 40.200—Advertising Award

The Contractor shall not refer to the Award of Contract in commercial advertising in such a manner as to state or imply that the firm or its services are endorsed or preferred by the Commonwealth of Kentucky.



Section 40.210— Patent or Copyright Infringement

The Contractor shall report to the Commonwealth promptly and in reasonable written detail, each notice of claim of patent or copyright infringement based on the performance of this Contract of which the Contractor has knowledge.

The Commonwealth agrees to notify the Contractor promptly, in writing, of any such claim, suit or proceeding, and at the Contractor's expense give the Contractor proper and full information needed to settle and/or defend any such claim, suit or proceeding.

If, in the Contractor's opinion, the equipment, materials, or information mentioned in the paragraphs above is likely to or does become the subject of a claim or infringement of a United States patent or copyright, then without diminishing the Contractor's obligation to satisfy any final award, the Contractor may, with the Commonwealth's written consent, substitute other equally suitable equipment, materials, and information, or at the

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Contractor's options and expense, obtain the right for the Commonwealth to continue the use of such equipment, materials, and information.

The Commonwealth agrees that the Contractor has the right to defend, or at its option, to settle and the Contractor agrees to defend at its own expense, or at its option to settle, any claim, suit or proceeding brought against the Commonwealth on the issue of infringement of any United States patent or copyright or any product, or any part thereof, supplied by the Contractor to the Commonwealth under this agreement. The Contractor agrees to pay any final judgment entered against the Commonwealth on such issue in any suit or proceeding defended by the Contractor.

If principles of governmental or public law are involved, the Commonwealth may participate in the defense of any such action, but no costs or expenses shall be incurred for the account of the Contractor without the Contractor's written consent.

The Contractor shall have no liability for any infringement based upon:

- the combination of such product or part with any other product or part not furnished to the Commonwealth by the Contractor
- the modification of such product or part unless such modification was made by the Contractor
- the use of such product or part in a manner for which it was not designed

Section 40.220 – Liability Insurance Requirements

The contractor shall indemnify, defend, and hold harmless all the state officials and the Commonwealth of Kentucky and all officials, employees and participating householders of the Commonwealth of Kentucky against any losses, claims, actions, damages, liability, and expenses, including but not limited to those in connection with loss of life, bodily and personal injury, or damage to property occasioned wholly or in part by the contractor or by persons employed directly or indirectly by the contractor in connection with the used electronic equipment collection, transportation, dismantling, salvage, sale, reuse, and/or recycling.

The contractor shall obtain and maintain in full force, for as long as necessary to fund the contractor's indemnification and defense obligations, the following types and amounts of insurance:

1. A Commercial Liability Insurance policy shall afford limits of no less than the following:

\$2,000,000 - General Aggregate

\$1,000,000 - Products and Completed Operations Aggregate

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\$1,000,000 - Personal and Advertising Injury
 \$1,000,000 – Each Occurrence
 \$ 50,000 – Fire Damage
 \$ 5,000 – Medical Expense

2. An automobile/truck liability insurance policy covering owned, non-owned, and hired vehicles. Said policy of insurance to have a minimum limit of \$1,000,000 per occurrence combined single limit for bodily injury, including death and property damage.

3. A Worker's Compensation and Employer's Liability insurance policy with Kentucky statutory limits for workers compensation and a minimum of \$1,000,000 per accident for employer's liability.

4. Contractors' Pollution Liability coverage in an amount not less than \$1,000,000 per occurrence and \$2,000,000 aggregate. The contractor shall provide proof of insurability with submission of this signed agreement. The contractor shall name as additional insured on Contractor's General Liability Insurance policy the Commonwealth of Kentucky. The contractor shall also furnish signed original certificates or bona-fide copies of the certificates of insurance (in the name of the Commonwealth) upon request within seven (7) days, but no more than thirty (30) days prior to the start of the contract.

Indemnity

The contractor (undersigned) jointly and severally agrees to indemnify and save harmless the Commonwealth (Indemnified) and their successors and assigns, from any claim, action, liability, loss, damage or suit, arising from the claim against the Commonwealth as a result of the contractor's actions. In the event of any asserted claim, the Indemnified shall provide the undersigned reasonably timely written notice of same, and thereafter the undersigned shall at its own expense defend protect and save harmless Indemnified against said claim or any loss or liability there under. In the further event the undersigned shall fail to so defend and/or indemnify and save harmless, then in such instance the Indemnified shall have full rights to defend, pay or settle said claim on their own behalf without notice to undersigned and with full rights to recourse against the undersigned for all fees, costs, expenses and payments made or agreed to be paid to discharge said claim. Upon default, the undersigned further agree to pay all reasonable attorneys' fees necessary to enforce this agreement. This agreement shall be unlimited as to amount or duration.

Section 40.230—Permits, Licenses, Taxes and Commonwealth Registration

The Contractor shall procure all necessary permits and licenses and abide by all applicable laws, regulations, and ordinances of all Federal, State, and local governments in which work under this Contract is performed.

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The Contractor shall maintain certification of authority to conduct business in the Commonwealth of Kentucky during the term of this Contract.

The Contractor shall pay any sales, use, and personal property taxes arising out of this Contract and the transaction contemplated hereby. Any other taxes levied upon this Contract, the transaction, or the equipment or services delivered pursuant hereto shall be borne by the Contractor.

Section 40.240—Contract Claims

The Parties acknowledge that KRS 45A.225 to 45A.290 governs contract claims.

Section 40.250—Rights and Remedies

The rights and remedies of the Commonwealth provided in Section 40 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

Section 40.260—Provisions for Termination of the Contract

This Contract shall be subject to the termination provisions set forth in 200 KAR 5:312.

Section 40.270—Bankruptcy

In the event the Contractor becomes the subject debtor in a case pending under the Federal Bankruptcy Code, the Commonwealth's right to terminate this Contract may be subject to the rights of a trustee in bankruptcy to assume or assign this Contract. The trustee shall not have the right to assume or assign this Contract unless the trustee (a) promptly cures all defaults under this Contract; (b) promptly compensates the Commonwealth for the monetary damages incurred as a result of such default, and (c) provides adequate assurance of future performance, as determined by the Commonwealth.

Section 40.280—Conformance with Commonwealth & Federal Laws/Regulations

This Contract is subject to the laws of the Commonwealth of Kentucky and where applicable Federal law. Any litigation with respect to this Contract shall be brought in

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state or federal court in **Franklin County, Kentucky**.

Section 40.290—Recycling

The Contractor is required to comply with the recycling requirements of 200 KAR 5:330.

Section 40.300—Accessibility

Vendor hereby warrants that the products or services to be provided under this Contract comply with the accessibility requirements of section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794d), and its implementing regulations set forth at Title 36, Code of Federal Regulations, part 1194. Vendor further warrants that the products or services to be provided under this Contract comply with existing federal standards established under Section 255 of the Federal Telecommunications Act of 1996 (47 U.S.C. § 255), and its implementing regulations set forth at Title 36, Code of Federal Regulations, part 1193, to the extent the Vendor's products or services may be covered by that act. Vendor agrees to promptly respond to and resolve any complaint regarding accessibility of its products or services which is brought to its attention.

V. Price

ITEM DESCRIPTION	Price per item	Price per pound
Monitors and terminals (excluding televisions)	0	0
Laptop computers	-15	-2
Console and table top televisions	7.5	0.15
Printers	0	0
CPU's & accessories**	-7	-0.25
Fax Machines	0	0
Cell Phones	0	0
Misc. Components & Small electronics	3	0.15
UPS	0	0
Copy Machines	0	0
LAN/WAN Components	0	0
Drives and Memory for sanitization	0	0
Cables	0	-0.1



V. Approvals

This Contract is subject to the terms and conditions as stated. By affixing their signatures below, the parties verify that they are authorized to bind this agreement between parties and that they accept the terms of this agreement.

1st Party: Creative Recycling Systems, Inc. as Contracting Agent

Jon A. Yob

Printed name

President/Chief Executive Officer (CEO)

Title

Signature

Date

2nd Party: Energy and Environment Cabinet Division of Waste Management

Leonard K. Peters

Printed name

Cabinet Secretary

Title

Signature

Date

Approved by the Finance and Administration Cabinet Office of Procurement Services

Don Speer

Printed name

Executive Director

Title

Signature

Date